

# NOT FOR PUBLICATION

ENTERED	12/20/05
FILED	
DEC 19 2005	
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA	
BY	144 DEPUTY

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re

STEPHEN A. PURNER,

Debtor.

Bankruptcy No. 03-03932

Adversary No. 04-90536

HAROLD TAXEL, Chapter 7 Trustee,

Plaintiff,

v.

FREDERICK D. HALE and JAMES A.  
HENNENHOEFER,

Defendants.

MEMORANDUM DECISION

This is an adversary proceeding brought by Harold Taxel, as Chapter 7 trustee for the above-named debtor ("Trustee"), seeking the turnover of funds from a custodian pursuant to Section 543 of the Bankruptcy Code ("Code"). The Court heard the Trustee's motion for summary judgment ("Motion") on September 22, 2005. The Court took the matter under submission at that time, but withheld a ruling upon being notified that the parties were discussing a possible settlement.

1 Having subsequently been informed that the negotiations have concluded  
2 without a settlement, the Court now issues its ruling on the Motion.

3 The debtor, Stephen Purner ("Debtor"), and his ex-wife were  
4 involved in a divorce and sold their residence during those  
5 proceedings. On October 2, 2002, the Family Court ordered that the  
6 homestead amount of \$75,000 be placed into the attorney trust account  
7 of Karen Heffron ("Heffron"), attorney for the Debtor's ex-wife.

8 The Family Court authorized several payments out of the funds,  
9 and these were made by Heffron. The Debtor's ex-wife then changed  
10 counsel and hired the defendant, the law firm of James Hennenhoefer,  
11 a Professional Corporation ("Law Corporation"). The amount of  
12 \$41,026.27 was transferred by Heffron to the Law Corporation to be  
13 held in the Law Corporation's trust account.

14 The Debtor filed for relief under Chapter 7 of the Code on April  
15 23, 2003. The Law Corporation made four postpetition disbursements  
16 from the funds it received from Heffron, and did so without bankruptcy  
17 court approval. The four transfers totaled \$16,156.36. The Law  
18 Corporation turned over the remaining funds to the Trustee, so the  
19 amount in controversy is limited to the \$16,156.36 disbursed by Law  
20 Corporation.

21 Pursuant to Code Section 543:

22 (a) A custodian with knowledge of the commencement of a  
23 case under this title concerning the debtor may not make  
24 any disbursement from, or take any action in the  
25 administration of, property of the debtor, proceeds,  
26 product, offspring, rents, or profits of such property, or  
27 property of the estate, in the possession, custody, or  
28 control of such custodian, except such action as is  
necessary to preserve such property.

(b) A custodian shall--

(1) deliver to the trustee any property of the debtor held  
by or transferred to such custodian, or proceeds, product,

1 offspring, rents, or profits of such property, that is in  
2 such custodian's possession, custody, or control on the  
3 date that such custodian acquires knowledge of the  
4 commencement of the case; and

5 (2) file an accounting of any property of the debtor, or  
6 proceeds, product, offspring, rents, or profits of such  
7 property, that, at any time, came into the possession,  
8 custody, or control of such custodian.

9 Pursuant to Code Section 101(11)(c), a custodian is defined as  
10 a trustee, receiver, or agent under applicable law, or  
11 under a contract, that is appointed or authorized to take  
12 charge of property of the debtor for the purpose of  
13 enforcing a lien against such property, or for the purpose  
14 of general administration of such property for the benefit  
15 of the debtor's creditors.

16 The "categories of custodians are descriptive rather than  
17 exhaustive. Congress defined the term broadly to include third  
18 parties who have taken charge of the debtor's assets for the general  
19 benefit of creditors." Matter of Cash Currency Exchange, Inc., 762  
20 F.2d 542, 553 (7<sup>th</sup> Cir. 1985). The Court notes that the Trustee  
21 asserted in his Statement of Undisputed Facts that Heffron was a  
22 custodian over the \$75,000 held in her attorney trust account, and in  
23 response, the Law Corporation admitted this was an undisputed fact.

24 The Court is satisfied that there is no genuine dispute as to the  
25 following material facts: the Law Corporation was a custodian of the  
26 funds under Section 543 because, like Heffron, it was authorized to  
27 take charge of the debtor's property for the purpose of administration  
28 of such property for the benefit of the debtor's creditors, including  
potentially his ex-wife; at the time of the four disbursements,  
defendant Frederick Hale ("Hale")<sup>1</sup> had knowledge of the Debtor's

---

<sup>1</sup> Hale was named as a defendant by the Trustee, but at the  
hearing on the Motion the Trustee stated on the record that he was no  
longer pursuing a recovery from Hale, and would only seek a recovery,  
if any, from the Law Corporation.

1 bankruptcy filing; at that time, Hale was an associate attorney for  
2 the Law Corporation and since Hale was the Law Corporation's  
3 associate, the Law Corporation had knowledge of the commencement of  
4 the bankruptcy case; the Law Corporation made the disbursements while  
5 having knowledge of the commencement of the bankruptcy case.

6 Based on these facts the Trustee is entitled to a judgment  
7 against the Law Corporation pursuant to Section 543. The Trustee's  
8 Motion is GRANTED.

9 Counsel for the Trustee is directed to submit a form of order  
10 consistent with this Memorandum Decision within 14 days of the entry  
11 of this decision.

12  
13  
14 Date: DEC 19 2005

  
\_\_\_\_\_  
Hon. James W. Meyers  
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
325 West F Street, San Diego, California 92101-6991

---

In re Bankruptcy Case No(s). 03-03932  
Adversary No(s). 04-90536

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**Memorandum Decision**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

Michael Y. MacKinnon  
Pyle, Sims, Duncan & Stevenson, APC  
401 "B" Street, Suite 1500  
San Diego, CA 92101

Richard R. Schwabe  
316 South Melrose Drive, Suite 100  
Vista, CA 92081-6618

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on December 19, 2005.

  
\_\_\_\_\_  
Molly Dishman  
Judicial Assistant to the Honorable James W. Meyers